

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0593-LII-E TCEQ ID: RN103367991 CASE NO.: 33201
RESPONDENT NAME: Joe Sotelo

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input checked="" type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Joe Sotelo, 1417 Upas Avenue, McAllen, Hidalgo County</p> <p>TYPE OF OPERATION: Landscape irrigation business</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on July 3, 2006, alleging that Joe Sotelo had applied for sprinkler system permits for unlicensed contractors. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: One complaint was received but the complainant has not expressed the desire to protest this action or speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 6, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney/SEP Coordinator: None</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Ms. Thomas Barnett, Enforcement Division, Enforcement Team 1, MC R-12, (713) 767-3680; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468</p> <p style="margin-left: 20px;">Respondent: Mr. Joe Sotelo, Owner, 1417 Upas Avenue, McAllen, Texas 78501-4234</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: July 3, 2006</p> <p>Date of Record Review Relating to this Case: March 27, 2007</p> <p>Date of NOE Relating to this Case: April 2, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>Failure to comply with local requirements, ordinances, and regulations. Specifically, the investigator documented that the Respondent applied for and received two sprinkler system permits from the City of McAllen with his license on behalf of an unlicensed contractor to install two irrigation systems [30 TEX. ADMIN. CODE § 344.70 and TEX. OCCUPATIONS CODE § 1903.251].</p>	<p>Total Assessed: \$475</p> <p>Total Deferred: \$95 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$380</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on April 12, 2007, Mr. Sotelo submitted an affidavit stating that he would no longer apply for permits for systems to be installed by unlicensed individuals.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

TCEQ

DATES	Assigned	2-Apr-2007	Screening	11-Apr-2007	EPA Due	
	PCW	16-May-2007				

RESPONDENT/FACILITY INFORMATION

Respondent	Joe Sotelo		
Reg. Ent. Ref. No.	RN103367991		
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	33201	No. of Violations	1	
Docket No.	2007-0593-LII-E	Order Type	1660	
Media Program(s)	Irrigators	Enf. Coordinator	Thomas Barnett	
Multi-Media		EC's Team	EnforcementTeam 2	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	5% Enhancement	Subtotals 2, 3, & 7	\$25
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Notes: The enhancement is based on one Notice of Violation for the same or similar violations as in the current enforcement action.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	10% Reduction	Subtotal 5	\$50
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes: The Respondent achieved compliance on April 12, 2007.

Total EB Amounts	\$0	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$100	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$475
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OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$475
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STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty	\$475
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DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$380
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Screening Date 11-Apr-2007

Docket No. 2007-0593-LII-E

PCW

Respondent Joe Sotelo

Policy Revision 2 (September 2002)

Case ID No. 33201

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN103367991

Media [Statute] Irrigators

Enf. Coordinator Thomas Barnett

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The enhancement is based on one Notice of Violation for the same or similar violations as in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 11-Apr-2007

Docket No. 2007-0593-LII-E

PCW

Respondent Joe Sotelo

Policy Revision 2 (September 2002)

Case ID No. 33201

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN103367991

Media [Statute] Irrigators

Enf. Coordinator Thomas Barnett

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 344.70 and Tex. Occupations Code § 1903.251

Violation Description

Failed by a licensed irrigator to comply with local requirements, ordinances, and regulations. Specifically, the investigator documented that the Respondent applied for and received two sprinkler system permits from the City of McAllen with his license on behalf of an unlicensed contractor to install two irrigation systems.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 2

15 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$500

Two single events (one for each permit) are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$475

This violation Final Assessed Penalty (adjusted for limits) \$475

Economic Benefit Worksheet

Respondent Joe Sotelo
Case ID No. 33201
Reg. Ent. Reference No. RN103367991
Media Irrigators
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$100	27-Mar-2007	12-Apr-2007	0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of operating in accordance with the regulations for licensed irrigators. The date required is the date of the investigation and the final date is the date the Respondent returned to compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

There are no avoided costs associated with this violation.

Approx. Cost of Compliance

\$100

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator:	CN601888472	SOTELO, JOE	Classification:	Rating:
Regulated Entity:	RN103367991	SOTELO, JOE	Classification:	Site Rating:
ID Number(s):	LANDSCAPE IRRIGATION LICENSING	LICENSE	LI0001534	
	BACKFLOW PREVENTION ASSEMBLY	LICENSE	BP0006697	
	TESTER LICENSING			
Location:	1417 UPAS AVE., MCALLEN, TEXAS			
TCEQ Region:	REGION 15 - HARLINGEN			
Date Compliance History Prepared:	April 18, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 18, 2002 to April 18, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Anita Keese Phone: (956) 430-6034

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 02/20/2007 (514067)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 344, SubChapter D 344.70
Description: Failure by a licensed irrigator to comply with local regulations that require reasonable inspection requirements, ordinances or regulations designed to protect the public water supply, any of which relates to work performed or to be performed within such political subdivision's territory.
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JOE SOTELO
RN103367991**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0593-LII-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Joe Sotelo ("Mr. Sotelo") under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCCUPATIONS CODE ch. 1903. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Sotelo appear before the Commission and together stipulate that:

1. Mr. Sotelo owns and operates a landscape irrigation business at 1417 Upas Avenue, McAllen, Hidalgo County, Texas (the "Site").
2. TCEQ has general authority to regulate the design and installation of landscape irrigation systems, and the licensing of landscape irrigators and installers, pursuant to TEX. OCCUPATIONS CODE ch. 1903.
3. The Commission and Mr. Sotelo agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Sotelo is subject to the Commission's jurisdiction.
4. Mr. Sotelo received notice of the violations alleged in Section II ("Allegations") on or about April 7, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Sotelo of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Four Hundred Seventy-Five Dollars (\$475) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Sotelo has paid Three Hundred Eighty Dollars (\$380) of the administrative penalty and Ninety-

Five Dollars (\$95) is deferred contingent upon Mr. Sotelo's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Sotelo fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Sotelo to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Sotelo have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on April 12, 2007, Mr. Sotelo submitted an affidavit stating that he would no longer apply for permits for systems to be installed by unlicensed individuals.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Sotelo has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, Mr. Sotelo is alleged to have failed to comply with local requirements, ordinances, and regulations, in violation of 30 TEX. ADMIN. CODE § 344.70 and TEX. OCCUPATIONS CODE § 1903.251, as documented during a record review conducted on March 27, 2007. Specifically, the investigator documented that Mr. Sotelo applied for and received two sprinkler system permits from the City of McAllen with his license on behalf of an unlicensed contractor to install two irrigation systems.

III. DENIALS

Mr. Sotelo generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Sotelo pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Sotelo's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Joe Sotelo, Docket No. 2007-0593-LII-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Sotelo.
3. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Sotelo in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Sotelo, or three days after the date on which the Commission mails notice of the Order to Mr. Sotelo, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Joe Sotelo
DOCKET NO. 2007-0593-LII-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

8/23/2007
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

6/6/07
Date

JOE SOTELLO
Name (Printed or typed)
Authorized Representative of
Joe Sotelo

OWNER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Section at the address in Section IV, Paragraph 1 of this Agreed Order.

RECEIVED
JUN 06 2007
TCEQ-Region 15

